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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE*
*425 Eye Street N.W.*
*BCIS, AAO, 20 Mass, 3/F*
*Washington, D.C. 20536*

[redacted]

APR 15 2003

File: WAC 01 276 58640 Office: California Service Center Date:

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: [redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Helen E. Crawford for

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an orthopaedic surgery center. It seeks to employ the beneficiary permanently in the United States as a medical assistant. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition.

On appeal, counsel submits additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Eligibility in this matter hinges on the petitioner's continuing ability to pay the wage offered beginning on the priority date, the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the request for labor certification was accepted for processing on January 13, 1998. The proffered salary as stated on the labor certification is $24,000 annually.

With the petition, the petitioner submitted no evidence of the its

ability to pay the proffered wage. Therefore, on November 29, 2001, the California Service Center requested evidence pertinent to the petitioner's continuing ability to pay the proffered wage beginning on the priority date. Pursuant to section 8 C.F.R. § 204.5(g)(2), the Service Center requested that the evidence be either annual reports, federal tax returns, audited financial statements.

In a letter dated February 19, 2002, an accountancy corporation stated that, pursuant to the petitioner's request, it was submitting copies of the petitioner's 1998, 1999, and 2000 tax returns.

The petitioner's 1120 corporate income tax returns for those years were attached to that letter. The 1998 return shows a taxable income before net operating loss deduction and special deductions of ($2,262). The accompanying Schedule L shows that the petitioner's current liabilities exceeded its current assets at the end of that year.

The 1999 return shows a taxable income before net operating loss deduction and special deductions of ($14,202). The corresponding Schedule L shows that the petitioner's current liabilities exceeded its current assets during that year.

The 2000 return shows a taxable income before net operating loss deduction and special deductions of ($117,697). Schedule L for that year shows that the petitioner's current assets were again less than its current liabilities.

On May 15, 2002, the Director, California Service Center, denied the petition, finding that the petitioner had failed to demonstrate its ability to pay the proffered wage.

On appeal, counsel submits a letter, dated May 31, 2002, from the petitioner's accountant. In this letter, the accountant states that the petitioner's tax returns did not reflect the petitioner's true financial situation. The accountant states that, had the petitioner hired the beneficiary during any of those years, it could have reduced the salary of the shareholder physician, shown as Compensation of Officers.

In addition, the accountant states that the petitioner had two shareholder physicians during 1998 and 1999, and that one of them left during 2000. The accountant states that,

> "As a result, significant adjustments were required, both because of the physician began his own separate entity

> (sic), and the fact that the corporation moved its offices, and had a significant non-cash write-off of leasehold improvements, which resulted in a loss for the corporation during this period."

Finally, the accountant states that the petitioner had accounts receivable of $400,000 to $650,000 when it filed each of those returns, but did not report them. Given that adjustment, the accountant notes that the petitioner's current assets would be greater than its current liabilities during each of the three salient years.

The intended meaning of the accountant's statement that the petitioner's tax returns do not reflect its actual financial strength "because of the physician began his own separate entity" is unclear. That statement cannot be further addressed.

The accountant also stated that the petitioner moved at some unstated time, and that the move effected non-cash write-offs. The accountant likely means that the petitioner was able to claim the undepreciated balance of improvements it made to its previous rented location as a deduction in the year during which it vacated those premises. If that move was during 2000, as the accountant seems to imply and as a large increase in losses seems to confirm, then the move was unlikely to cause the losses suffered during 1998 and 1999. In any event, the accountant did not provide any evidence of the amount of those non-cash write-offs.

Similarly, the petitioner's accountant stated that the petitioner's accounts receivable were between $400,000 and $650,000 during each of the three years in question and that, had the petitioner declared those accounts receivable, its current assets would have been much larger than its current liabilities. Then the net current assets would, according to the accountant, have demonstrated the ability to pay the proffered wage.

The beneficiary's accountant, however, provided no evidence of those large receivables. An unsupported statement is insufficient to sustain the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

In any event, counsel's arguments pertinent to non-cash write-offs and undeclared accounts receivable imply that the assets and income shown on the petitioner's income tax returns are poor indicators of the petitioner's financial position. The petitioner is obliged, pursuant to 8 C.F.R. § 204.5(g)(2), to demonstrate its ability to pay the proffered wage with copies of annual reports, federal tax returns, or audited financial statements. The petitioner was not

obliged to rely on its income tax returns, but chose to. Counsel might have provided annual reports or audited financial statements, but chose not to. Having made those choices, the petitioner will not now be heard to argue, through counsel, that those returns are a poor indicator of its ability to pay the proffered wage.

The petitioner's tax returns appear to show that the petitioner was unable to pay the proffered wage during 1998, 1999, and 2000 either out of its income, out of its assets, or out of the combination. The petitioner submitted neither of the other types of evidence contemplated by 8 C.F.R. § 204.5(g)(2). Therefore, the petitioner has not established that it had the continuing ability to pay the proffered salary beginning on the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.